

ESTTA Tracking number: **ESTTA40168**

Filing date: **07/27/2005**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91163999
Party	Defendant Thomas P. Muchisky Muchisky, Thomas P. 13250 Lakefront Drive Earth City, MO 63045
Correspondence Address	LIONEL L. LUCCHESI POLSTER, LIEDER, WOODRUFF & LUCCHESI 12412 POWERS COURT DRIVE, SUITE 200 ST. LOUIS, MO 63131
Submission	Answer
Filer's Name	Lionel L. Lucchesi
Filer's e-mail	llucchesi@patpro.com, nschomogy@patpro.com
Signature	/Lionel L. Lucchesi/
Date	07/27/2005
Attachments	answer to amended notice of opposition.pdf (5 pages)

**IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SYBARITIC, INC.,)	
)	
Opposer,)	Opposition No.: 91163999
)	Serial No. 78/282,661
v.)	
)	
THOMAS P. MUCHISKY,)	
)	
Applicant.)	

ANSWER TO AMENDED NOTICE OF OPPOSITION

Applicant, Thomas P. Muchisky, hereby answers the Amended Notice of Opposition filed by Opposer, Sybaritic, Inc., as follows:

In response to the preamble of the Amended Notice of Opposition, Applicant lacks knowledge or information sufficient to form a belief as to the state of incorporation of Opposer and, accordingly, denies the same. Applicant further denies that Opposer will be damaged by the registration of the mark shown in application Serial No. 78/282,661, which was filed on August 4, 2003.

1. Applicant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 1 of the Amended Notice of Opposition, and therefore denies the same.

2. Applicant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 2 of the Amended Notice of Opposition, and therefore denies the same.

3. Applicant admits the allegations of paragraph 3 of the Amended Notice of Opposition.

4. Applicant denies the allegation of paragraph 4 of the Amended Notice of Opposition, but admits that the U.S. trademark registrations listed in paragraph 3 of the Amended Notice of Opposition cover the designs of applicators for a hand-held massager.

5. Applicant admits the allegation of paragraph 5 of the Amended Notice of Opposition.

6. Applicant admits the allegations of paragraph 6 of the Amended Notice of Opposition.

7. Applicant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 7 of the Amended Notice of Opposition, and therefore denies the same.

8. Applicant denies the allegation of paragraph 8 of the Amended Notice of Opposition.

9. Applicant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 9 of the Amended Notice of Opposition, and therefore denies the same.

10. Applicant is without knowledge or information sufficient to form a belief as to the allegation of paragraph 10 of the Amended Notice of Opposition, and therefore denies the same.

11. Applicant denies the allegation of paragraph 11 of the Amended Notice of Opposition.

12. Applicant denies the allegations of paragraph 12 of the Amended Notice of Opposition.

13. Applicant denies the allegations of paragraph 13 of the Amended Notice of Opposition.

14. Applicant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 14 of the Amended Notice of Opposition, and therefore denies the same.

15. Applicant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 15 of the Amended Notice of Opposition, and therefore denies the same.

16. Applicant denies the allegations of paragraph 16 of the Amended Notice of Opposition.

17. Applicant denies the allegations of paragraph 17 of the Amended Notice of Opposition.

18. Applicant denies the allegations of paragraph 18 of the Amended Notice of Opposition.

19. Applicant denies the allegations of paragraph 19 of the Amended Notice of Opposition.

20. Applicant denies the allegations of paragraph 20 of the Amended Notice of Opposition.

21. Applicant denies the allegations of paragraph 21 of the Amended Notice of Opposition.

22. Applicant denies the allegations of paragraph 22 of the Amended Notice of Opposition.

AFFIRMATIVE DEFENSES

23. The Amended Notice of Opposition fails to state a claim upon which relief can be granted.

24. As a result of its continuous substantial usage of the mark shown in Application Serial No. 78/282,661 since adoption, this mark is a valuable asset of Applicant and carries considerable goodwill and consumer acceptance of its products sold under the mark. Such goodwill and widespread usage has made the mark distinctive to Applicant.

25. Applicant's mark as shown in Application Serial No. 78/282,661 has acquired secondary meaning.

26. Applicant's mark as shown in Application Serial No. 78/282,661 functions as a trademark.

27. Opposer has not used the mark shown in Application Serial No. 78/282,661 or any mark similar thereto. Therefore Opposer has no trademark rights in the mark for an applicator for a hand-held massager and has not been damaged, and cannot be damaged, by registration of Applicant's mark.

WHEREFORE, Applicant contends that this Opposition is groundless and baseless in fact; that Opposer has not shown wherein it will be, or is likely to be, damaged by the registration of Applicant's trademark; and Applicant prays that this Opposition be dismissed and that Applicant be granted registration of its trademark.

Respectfully submitted,

By: /Lionel L. Lucchesi/
Lionel L. Lucchesi, 25,891
Polster, Lieder, Woodruff & Lucchesi, L.C.
12412 Powerscourt Drive, Suite 200

St. Louis, Missouri 63131
(314) 238-2400 Phone
(314) 238-2401 Fax
Attorneys for Applicant
Thomas P. Muchisky

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of ANSWER TO AMENDED NOTICE OF OPPOSITION has been served via first class U. S. Mail, postage prepaid, this 27th day of July, 2005, upon the following:

Peter J. Ims, Esq.
Westman, Champlin & Kelly, P.A.
900 Second Avenue South, Suite 1400
International Centre
Minneapolis, MN 55402

and

Brian Kidwell, Esq.
Sybaritic, Inc.
9220 James Avenue
Bloomington, Minnesota 55431

Attorneys for Opposer
Sybaritic, Inc.

/Nora G. Schomogy/